

2013 DRAFTING REQUEST

Bill

Received: **3/12/2013** Received By: **chanaman**
Wanted: **As time permits** Same as LRB:
For: **Thomas Weatherston (608) 266-0731** By/Representing: **Vicky Selkove in Mason's office**
May Contact: Drafter: **chanaman**
Subject: **Criminal Law - crimes agnst kids** Addl. Drafters:
Criminal Law - sentencing Extra Copies:
Criminal Law - sex offenses

Submit via email: **YES**
Requester's email: **Rep.Weatherston@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Imposing bail conditions on residency proximity to victim following charge of child sex offense

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	chanaman 4/3/2013	scalvin 4/4/2013	jmurphy 4/4/2013	_____	lparisi 3/20/2013		
/P2	chanaman 4/11/2013	scalvin 4/11/2013	jmurphy 4/11/2013	_____	sbasford 4/4/2013		
/P3	chanaman 4/11/2013	scalvin 4/11/2013	jmurphy 4/11/2013	_____	sbasford 4/11/2013		
/1	chanaman	wjackson	jmurphy	_____	sbasford		

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	4/12/2013	4/12/2013	4/12/2013	_____	4/11/2013		
/2				_____	lparisi	sbasford	
				_____	4/12/2013	4/29/2013	

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↳ Not
Needed

<END>

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1/2 WLj 4/12 *DM 4/12* *self*

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4/11/2013

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FE Sent For: *1P2 sac*
04/04/2013 *jm* *4/4* *jm+PH* *4/4*

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/P1	chanaman	1/P1 sac 03/20/2013		_____	_____		

FE Sent For:

<END>



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE CORY MASON
FROM: ^{KBO} Katie Bender-Olson, Staff Attorney
RE: Judicial Discretion in Imposing Bail Conditions
DATE: March 1, 2013

Your staff inquired about judicial discretion in imposing bail conditions (also referred to as "bond conditions") on defendants. Specifically, your staff inquired about judicial discretion to prohibit a defendant accused of a child sex offense from residing in close proximity to the child victim.

Wisconsin law grants judges considerable discretion in imposing bail conditions on defendants. Current law *permits* a judge to prohibit an individual from residing close to a child victim as a bail condition, but does *not require* a judge to do so. Compelling a judge to impose conditions restricting where a defendant accused of a child sex offense may reside would require a statutory change. The following memorandum explores these matters in further depth.

JUDICIAL DISCRETION IN IMPOSING BAIL CONDITIONS

Wisconsin judges have expansive discretion to determine what, if any, bail conditions will be imposed on a defendant granted pretrial release. Bail conditions are imposed on a defendant to ensure that the defendant appears in court for trial and to protect members of the community. A defendant who violates a bail condition imposed by the judge may have his or her bail revoked, may be charged with bail jumping, and may be returned to jail while the criminal case moves forward.

The Wisconsin statutes authorize a judge to impose bail conditions to protect members of the community from "serious bodily harm"¹ or to prevent the intimidation of witnesses, but

¹ "Serious bodily harm" means bodily injury which causes or contributes to the death of a human being or which creates a substantial risk of death or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury. [s. 969.001 (2), Stats.]

do not require a judge to impose any particular bail condition on a defendant. Decisions regarding what conditions to impose on a specific defendant are within the judge's discretion. Rather than mandating particular bail conditions, the statutes primarily address what issues a judge must consider in imposing bail conditions and what conditions a judge is authorized to impose.

State law enumerates "proper considerations" for a judge to weigh before setting a bail amount or imposing bail conditions on a defendant. The list of "proper considerations" appears in s. 939.01 (4), Stats., and includes the following:

- Nature, number, and gravity of the offenses committed by the defendant.
- Potential penalty for the offenses.
- Whether the alleged acts were violent in nature.
- The defendant's prior record of criminal convictions.
- Character, health, residence and reputation of the defendant.
- Character and strength of the evidence.
- Whether the defendant is currently on bail and subject to other release conditions in another pending case.

State law authorizes a judge to impose certain bail conditions on a defendant who has been charged with a felony or to deny release on bail entirely in certain circumstances. Among other conditions, the statutes authorize a judge to impose restrictions on where a defendant charged with a felony may live. The statutes also grant a judge more general authority to impose "any other condition" reasonably necessary to protect members of the community from serious bodily harm or prevent intimidation of witnesses. [s. 969.03 (1), Stats.]

Alternatively, a judge may deny pretrial release to a defendant accused of certain serious crimes when the district attorney alleges that available bail conditions will not adequately protect the public. The crimes for which a defendant may be denied release on bail include First and Second Degree Sexual Assault of a Child. [s. 939.035 (2), Stats.] Therefore, under current law, a judge may impose a bail condition prohibiting a defendant from residing in close proximity to a child victim or a judge may deny release on bail, but a judge is not required to take either of these actions.

IMPOSING BAIL CONDITIONS FOR DEFENDANTS ACCUSED OF CHILD SEX CRIMES

Your staff inquired about potential legislative options for requiring judges to impose particular bail conditions on defendants accused of child sex offenses. Given the discretion that judges currently possess under state law, additional statutory language is needed to require judges to impose a particular bail condition on a defendant.

North Carolina has a statutory provision that requires judges to impose specific bail conditions on defendants accused of child sex offenses or violent crimes which may serve as a starting point in your consideration of the matter. The North Carolina statute provides that "in all cases" in which the defendant is charged with child abuse, specified child sex crimes, or incest, kidnapping, assault, or other violent crimes against minors, the judge "shall impose" certain conditions on pretrial release. These bail conditions are that the defendant must:

- Stay away from the home, temporary residence, school, business, or place of employment of the alleged victim.
- Refrain from communicating or attempting to communicate, directly or indirectly, with the victim, except under circumstances specified in an order entered by a judge with knowledge of the pending charges.
- Refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.

The bail conditions specified in the North Carolina statute must be imposed on defendants in addition to any other conditions the judge imposes. However, the statute allows a judge to waive a listed condition if the judge makes written findings that imposing the condition is not in the best interests of the child victim. [N.C. Gen. Stat. § 15A-534.4 (2013).]

The first required condition in the North Carolina statute, that the defendant "stay away from" the victim's home or other locations, provides an example of mandatory bail condition language requiring a defendant to maintain distance from a child victim. However, the language does not specify how much distance a defendant must maintain, nor does it explicitly prohibit a defendant from residing nearby. If your goal is to ensure that defendants cannot reside in close proximity to the victim, you may want to consider more specific language.

As a final note, some opposition based on economic hardship may be raised to legislation mandating that judges prohibit all defendants accused of child sex offenses from residing close to the child victim. Requiring judges to impose this bail condition in all cases, without the ability to consider the facts of each individual case, may result in some defendants without means being forced into homelessness.

A copy of the referenced North Carolina statute is attached to this memorandum. If you have any questions or need additional information, please do not hesitate to contact me at the Legislative Council staff offices.

KBO:ksm

Attachment



1 of 1 DOCUMENT

General Statutes of North Carolina
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*** Statutes current through the 2012 Regular Session ***
*** Annotations current through January 11, 2013 ***

CHAPTER 15A. CRIMINAL PROCEDURE ACT
SUBCHAPTER 05 . CUSTODY
ARTICLE 26. BAIL
PART 1. GENERAL PROVISIONS

Go to the North Carolina Code Archive Directory

N.C. Gen. Stat. § 15A-534.4 (2013)

§ 15A-534.4. Sex offenses and crimes of violence against child victims: bail and pretrial release

(a) In all cases in which the defendant is charged with felonious or misdemeanor child abuse, with taking indecent liberties with a minor in violation of *G.S. 14-202.1*, with rape or any other sex offense in violation of Article 7A, Chapter 14 of the General Statutes, against a minor victim, with incest with a minor in violation of *G.S. 14-178*, with kidnapping, abduction, or felonious restraint involving a minor victim, with a violation of *G.S. 14-320.1*, with assault or any other crime of violence against a minor victim, or with communicating a threat against a minor victim, in addition to the provisions of *G.S. 15A-534* a judicial official shall impose the following conditions on pretrial release:

(1) That the defendant stay away from the home, temporary residence, school, business, or place of employment of the alleged victim.

(2) That the defendant refrain from communicating or attempting to communicate, directly or indirectly, with the victim, except under circumstances specified in an order entered by a judge with knowledge of the pending charges.

(3) That the defendant refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.

The conditions set forth above shall be imposed in addition to any other conditions that the judicial official may impose on pretrial release.

(b) Notwithstanding the provisions of subsection (a) of this section, upon request of the defendant, the judicial official may waive one or more of the conditions required by subdivisions (1) and (2) of subsection (a) of this section if the judicial official makes written findings of fact that it is not in the best interest of the alleged victim that the condition

be imposed on the defendant.

HISTORY: 1993 (Reg. Sess., 1994), c. 723, s. 5; 2007-172, s. 1.

NOTES: EDITOR'S NOTE. --Session Laws 1993 (Reg. Sess., 1994), c. 723, which enacted this section, in s. 6 provides: "Nothing in this act obligates the General Assembly to appropriate any funds to implement this act."

EFFECT OF AMENDMENTS. --Session Laws 2007-172, s. 1, effective December 1, 2007, and applicable to offenses committed on or after that date, added the subsection (a) designation, and in subsection (a), substituted "shall" for "may" following "a judicial official" in the introductory paragraph, substituted a colon for a semicolon at the end of the introductory paragraph, and substituted "shall" for "may" following "set forth above" in the last paragraph; and added subsection (b).

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, or chapter.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1882/P1

CMH:J:....

see

Thurs.
per requester

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

per cat

- 1 **AN ACT** ...; **relating to:** residency conditions of release before trial for individuals
- 2 charged with felony sexual assault of a child.

Analysis by the Legislative Reference Bureau

Under current law, a judge may release a defendant charged with a felony without bail or upon the execution of an unsecured appearance bond. The judge may impose conditions of the release including: placing the defendant in the custody of a person or organization; restricting the defendant's travel, association, or residency; or prohibiting the defendant from possessing any dangerous weapon. The judge may also deny release to a defendant charged with certain felonies including first-degree or second-degree sexual assault of a child or repeated sexual assault of the same child (child sex offense).

This bill requires a judge who is releasing a defendant charged with a child sex offense to impose as a condition of release a restriction that the defendant not reside within 250 feet of the residence of the alleged victim. This bill allows some discretion, including not imposing the condition, if the condition would cause the defendant or the defendant's family undue hardship.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

×

- 3 **SECTION 1.** 175.60 (3) (d) of the statutes is amended to read:

1 175.60 (3) (d) The court has prohibited the individual from possessing a
2 dangerous weapon under s. 969.02 (3) (c) or 969.03 ~~(1)~~ (1c) (c).

3 History: 2011 a. 35; s. 13.92 (1) (bm) 2.

3 **SECTION 2.** 175.60 (9g) (a) 2. of the statutes is amended to read:

4 175.60 (9g) (a) 2. The department shall conduct a criminal history record
5 search and shall search its records and conduct a search in the national instant
6 criminal background check system to determine whether the applicant is prohibited
7 from possessing a firearm under federal law; whether the applicant is prohibited
8 from possessing a firearm under s. 941.29; whether the applicant is prohibited from
9 possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant
10 has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1.,
11 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction
12 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued
13 by a court established by any federally recognized Wisconsin Indian tribe or band,
14 except the Menominee Indian tribe of Wisconsin, that includes notice to the
15 respondent that he or she is subject to the requirements and penalties under s.
16 941.29 and that has been filed with the circuit court under s. 806.247 (3); and
17 whether the applicant is prohibited from possessing a firearm under s. 813.125 (4m);
18 and to determine if the court has prohibited the applicant from possessing a
19 dangerous weapon under s. 969.02 (3) (c) or 969.03 ~~(1)~~ (1c) (c) and if the applicant is
20 prohibited from possessing a dangerous weapon as a condition of release under s.
21 969.01.

22 History: 2011 a. 35; s. 13.92 (1) (bm) 2.

22 **SECTION 3.** 175.60 (11) (a) 2. g. of the statutes is amended to read:

1 175.60 (11) (a) 2. g. A court has prohibited the individual from possessing a
2 dangerous weapon under s. 969.02 (3) (c) or 969.03 ~~(1)~~ (1c) (c).

3 History: 2011 a. 35; s. 13.92 (1) (bm) 2. ^x

3 **SECTION 4.** 175.60 (14) (am) of the statutes is amended to read:

4 175.60 (14) (am) The department shall suspend a license issued under this
5 section if a court has prohibited the licensee from possessing a dangerous weapon
6 under s. 969.02 (3) (c) or 969.03 ~~(1)~~ (1c) (c). If the individual whose license was
7 suspended is no longer subject to the prohibition under s. 969.02 (3) (c) or 969.03 (1)
8 (c), whichever is applicable, sub. (3) (b), (c), (d), (e), (f), or (g) does not apply to the
9 individual, and the suspended license would not have expired under sub. (15) (a) had
10 it not been suspended, the department shall restore the license within 5 business
11 days of notification that the licensee is no longer subject to the prohibition.

12 History: 2011 a. 35; s. 13.92 (1) (bm) 2. ^x

12 **SECTION 5.** 301.03 (7m) of the statutes is amended to read:

13 301.03 (7m) Supervise criminal defendants accepted into the custody of the
14 department under s. 969.02 (3) (a) or 969.03 ~~(1)~~ (1c) (a). The department shall charge
15 the county that is prosecuting the defendant a fee for providing this supervision. The
16 department shall set the fee by rule.

17 History: 1989 a. 31, 107, 121, 188, 336; 1991 a. 39; 1993 a. 16, 377, 479; 1995 a. 27 ss. 6355, 6356m, 6356p, 9126 (19); 1995 a. 77, 141; 1997 a. 27, 35, 237, 275, 283,
284; 1999 a. 9, 32; 2001 a. 16, 109; 2003 a. 321; 2005 a. 344, 431, 434, 451; 2007 a. 1; 2007 a. 20 ss. 3100g, 9121 (6) (a); 2007 a. 96, 97; 2009 a. 28, 100; 2011 a. 32, 38.

17 **SECTION 6.** 969.03 (1) (intro.) of the statutes is renumbered 969.03 (1) and

18 amended to read:

19 969.03 (1) (intro.) A defendant charged with a felony may be released by the
20 judge without bail or upon the execution of an unsecured appearance bond ~~or the~~
21 (1c) The judge may in addition to requiring under sub. (1) the execution of an
22 appearance bond or in lieu thereof impose one or more of the following conditions
23 which will assure appearance for trial:

History: 1971 c. 298; 1979 c. 112; 1981 c. 118, 183; 1989 a. 31; 1991 a. 63; 1993 a. 486; 2005 a. 59, 447.

1 **SECTION 7.** 969.03 (1) (a), (c), (d) and (e) of the statutes are renumbered 969.03
2 (1c) (a), (c), (d) and (e).

3 **SECTION 8.** 969.03 (1) (b) of the statutes is renumbered 969.03 (1c) (b) and
4 amended to read:

5 969.03 (1c) (b) Place restrictions on the travel, or association of the
6 defendant during the period of release.

7 (bm) Except as provided in sub. (1e), place restrictions on the place of abode of
8 the defendant during the period of release.

History: 1971 c. 298; 1979 c. 112; 1981 c. 118, 183; 1989 a. 31; 1991 a. 63; 1993 a. 486; 2005 a. 59, 447.

9 **SECTION 9.** 969.03 (1e) of the statutes is created to read:

10 969.03 (1e) (a) Except as provided in par. (b), if the defendant is charged with
11 a violation of s. 948.02 (1) or (2) or 948.025 (1), the judge shall impose, in addition to
12 requiring under sub. (1) the execution of an appearance bond or in lieu thereof, as
13 a condition a restriction that the defendant not reside within 250 feet of the residence
14 of the alleged victim of the violation.

15 (b) If the judge finds, by clear and convincing evidence, that imposing the
16 condition under par. (a) would cause the defendant or the defendant's family undue
17 hardship, the judge may do one of the following:

18 1. The judge may impose a condition that the defendant not reside within a
19 distance that is less than 250 feet of the residence of the alleged victim.

20 2. If imposing a restriction under subd. 1. would cause the defendant or the
21 defendant's family undue hardship, not impose the condition under par. (a).

****NOTE: Please review this distance of 250 feet. I based it on the exclusion zones
under s. 301.48 (3) (c). The two statutes are only minimally related, but I wasn't sure
what distance you intended.

22 **SECTION 10.** 969.03 (1m) of the statutes is amended to read:

969.03 (1m) The clerk of circuit court may accept a credit card or debit card, as defined in s. 59.40 (5) (a) 1. and 2., instead of cash under sub. (1) (1c) (d).

History: 1971 c. 298; 1979 c. 112; 1981 c. 118, 183; 1989 a. 31; 1991 a. 63; 1993 a. 486; 2005 a. 59, 447.

SECTION 11. 969.03 (4) of the statutes is amended to read:

969.03 (4) If a judgment of conviction is entered in a prosecution in which a deposit had been made in accordance with sub. (1) ~~(1c)~~(d), the balance of the deposit, after deduction of the bond costs, shall be applied first to the payment of any restitution ordered under s. 973.20 and then, if ordered restitution is satisfied in full, to the payment of the judgment.

History: 1971 c. 298; 1979 c. 112; 1981 c. 118, 183; 1989 a. 31; 1991 a. 63; 1993 a. 486; 2005 a. 59, 447.

SECTION 12. 969.03 (5) of the statutes is amended to read:

969.03 (5) If the complaint against the defendant has been dismissed or if the defendant has been acquitted, the entire sum deposited shall be returned. A deposit under sub. (1) ~~(1c)~~ (d) shall be returned to the person who made the deposit, his or her heirs or assigns, subject to sub. (4).

History: 1971 c. 298; 1979 c. 112; 1981 c. 118, 183; 1989 a. 31; 1991 a. 63; 1993 a. 486; 2005 a. 59, 447.

SECTION 13. Initial applicability.

(1) This act first applies to releases granted on the effective date of this subsection.

(END)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1882/P1

CMH:sac:rs

P2

Soon
IN 4/3

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

PWF
04/4

gen cat

travel, association,
and

1 **AN ACT to renumber 969.03 (1) (a), (c), (d) and (e); to renumber and amend**
2 **969.03 (1) (intro.) and 969.03 (1) (b); to amend 175.60 (3) (d), 175.60 (9g) (a) 2.,**
3 **175.60 (11) (a) 2. g., 175.60 (14) (am), 301.03 (7m), 969.03 (1m), 969.03 (4) and**
4 **969.03 (5); and to create 969.03 (1e) of the statutes; relating to:** residency
5 conditions of release before trial for individuals charged with felony sexual
6 assault of a child.

Analysis by the Legislative Reference Bureau

Under current law, a judge may release a defendant charged with a felony without bail or upon the execution of an unsecured appearance bond. The judge may impose conditions of the release including: placing the defendant in the custody of a person or organization; restricting the defendant's travel, association, or residency; or prohibiting the defendant from possessing any dangerous weapon. The judge may also deny release to a defendant charged with certain felonies including first-degree or second-degree sexual assault of a child or repeated sexual assault of the same child (child sex offense).

This bill requires a judge who is releasing a defendant charged with a child sex offense to impose as a condition of release a restriction that the defendant not reside within 250 feet of the residence of the alleged victim. This bill allows some discretion,

the following

on the
residency
restriction

including not imposing the condition, if the condition would cause the defendant or the defendant's family undue hardship.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 175.60 (3) (d) of the statutes is amended to read:

175.60 (3) (d) The court has prohibited the individual from possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 ~~(1)~~ (1c) (c).

SECTION 2. 175.60 (9g) (a) 2. of the statutes is amended to read:

175.60 (9g) (a) 2. The department shall conduct a criminal history record search and shall search its records and conduct a search in the national instant criminal background check system to determine whether the applicant is prohibited from possessing a firearm under federal law; whether the applicant is prohibited from possessing a firearm under s. 941.29; whether the applicant is prohibited from possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he or she is subject to the requirements and penalties under s. 941.29 and that has been filed with the circuit court under s. 806.247 (3); and whether the applicant is prohibited from possessing a firearm under s. 813.125 (4m); and to determine if the court has prohibited the applicant from possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 ~~(1)~~ (1c) (c) and if the applicant is

1 prohibited from possessing a dangerous weapon as a condition of release under s.
2 969.01.

3 **SECTION 3.** 175.60 (11) (a) 2. g. of the statutes is amended to read:

4 175.60 (11) (a) 2. g. A court has prohibited the individual from possessing a
5 dangerous weapon under s. 969.02 (3) (c) or 969.03 (1) (1c) (c).

6 **SECTION 4.** 175.60 (14) (am) of the statutes is amended to read:

7 175.60 (14) (am) The department shall suspend a license issued under this
8 section if a court has prohibited the licensee from possessing a dangerous weapon
9 under s. 969.02 (3) (c) or 969.03 ~~(1)~~ (1c) (c). If the individual whose license was
10 suspended is no longer subject to the prohibition under s. 969.02 (3) (c) or 969.03 (1)
11 (c), whichever is applicable, sub. (3) (b), (c), (d), (e), (f), or (g) does not apply to the
12 individual, and the suspended license would not have expired under sub. (15) (a) had
13 it not been suspended, the department shall restore the license within 5 business
14 days of notification that the licensee is no longer subject to the prohibition.

15 **SECTION 5.** 301.03 (7m) of the statutes is amended to read:

16 301.03 (7m) Supervise criminal defendants accepted into the custody of the
17 department under s. 969.02 (3) (a) or 969.03 ~~(1)~~ (1c) (a). The department shall charge
18 the county that is prosecuting the defendant a fee for providing this supervision. The
19 department shall set the fee by rule.

20 **SECTION 6.** 969.03 (1) (intro.) of the statutes is renumbered 969.03 (1) and
21 amended to read:

22 969.03 (1) (intro.) A defendant charged with a felony may be released by the
23 judge without bail or upon the execution of an unsecured appearance bond or the.

(1c) The judge may in addition to requiring under sub. (1) the execution of an appearance bond or in lieu thereof impose one or more of the following conditions which will assure appearance for trial:

SECTION 7. 969.03 (1) (a), (c), (d) and (e) of the statutes are renumbered 969.03 (1c) (a), (c), (d) and (e).

SECTION 8. 969.03 (1) (b) of the statutes is renumbered 969.03 (1c) (b) and amended to read:

969.03 (1c) (b) Place restrictions on the travel, or association or of the defendant during the period of release.

(bm) Except as provided in sub. (1e), place restrictions on the place of abode of the defendant during the period of release.

SECTION 9. 969.03 (1e) of the statutes is created to read:

969.03 (1e) (a) Except as provided in par. (b), if the defendant is charged with a violation of s. 948.02 (1) or (2) or 948.025 (1), the judge shall impose, in addition to requiring under sub. (1) the execution of an appearance bond or in lieu thereof, ~~as~~ ^{all of the following:} ^{INS 4-16} a condition that the defendant not reside within 250 feet of the residence of the alleged victim of the violation.

(b) If the judge finds, by clear and convincing evidence, that imposing the condition under par. (a) ^{3.} would cause the defendant or the defendant's family undue hardship, the judge may do one of the following:

1. The judge may impose a condition that the defendant not reside within a distance that is less than 250 feet of the residence of the alleged victim.

2. If imposing a restriction under subd. 1. would cause the defendant or the defendant's family undue hardship, not impose the condition under par. (a). ³

****NOTE: Please review this distance of 250 feet. I based it on the exclusion zones under s. 301.48 (3) (c). The two statutes are only minimally related, but I wasn't sure what distance you intended.

SECTION 10. 969.03 (1m) of the statutes is amended to read:

969.03 (1m) The clerk of circuit court may accept a credit card or debit card, as defined in s. 59.40 (5) (a) 1. and 2., instead of cash under sub. ~~(1)~~ (1c) (d).

SECTION 11. 969.03 (4) of the statutes is amended to read:

969.03 (4) If a judgment of conviction is entered in a prosecution in which a deposit had been made in accordance with sub. ~~(1)~~ (1c) (d), the balance of the deposit, after deduction of the bond costs, shall be applied first to the payment of any restitution ordered under s. 973.20 and then, if ordered restitution is satisfied in full, to the payment of the judgment.

SECTION 12. 969.03 (5) of the statutes is amended to read:

969.03 (5) If the complaint against the defendant has been dismissed or if the defendant has been acquitted, the entire sum deposited shall be returned. A deposit under sub. ~~(1)~~ (1c) (d) shall be returned to the person who made the deposit, his or her heirs or assigns, subject to sub. (4).

SECTION 13. Initial applicability.

(1) This act first applies to releases granted on the effective date of this subsection.

(END)

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1882/p2ins
CMH:.....

1 Insert A

 : a restriction that the defendant avoid the residence, school, or place of
employment of the alleged victim; a restriction that the defendant avoid contacting,
or attempting to contact, the alleged victim; and

3 Insert 4-12

4 **SECTION 1.** 969.03 (1) (intro.) of the statutes is amended to read:

5 969.03 (1) (intro.) A defendant charged with a felony may be released by the
6 judge without bail or upon the execution of an unsecured appearance bond ~~or the~~
7 The judge may in addition to requiring the execution of an appearance bond or in lieu
8 thereof impose one or more of the following conditions which will assure appearance
9 for trial:

History: 1971 c. 298; 1979 c. 112; 1981 c. 118, 183; 1989 a. 31; 1991 a. 63; 1993 a. 486; 2005 a. 59, 447.

10 **SECTION 2.** 969.03 (1) (b) of the statutes is amended to read:

11 969.03 (1) (b) ~~Place~~ Except as provided in sub. (1e), place restrictions on the
12 travel, association, or place of abode of the defendant during the period of release.

History: 1971 c. 298; 1979 c. 112; 1981 c. 118, 183; 1989 a. 31; 1991 a. 63; 1993 a. 486; 2005 a. 59, 447.

14 Insert 4-16

15 1. A restriction that the defendant avoid the residence, ^{or} (any temporary
16 residence, school, or place of employment) of the alleged victim of the violation.

17 2. A restriction that the defendant avoid contacting, attempting to contact, or
18 causing any person other than a party's attorney or a law enforcement officer to
19 contact or attempt to contact the alleged victim of the violation.

20 3. Except as provided in par. (b),



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1882/P2 P3

CMH:sac/jm

today

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

repeal

- 1 AN ACT *to amend* 969.03 (1) (intro.) and 969.03 (1) (b); and *to create* 969.03 (1e)
2 of the statutes; **relating to:** travel, association, and residency conditions of
3 release before trial for individuals charged with felony sexual assault of a child.

Analysis by the Legislative Reference Bureau

Under current law, a judge may release a defendant charged with a felony without bail or upon the execution of an unsecured appearance bond. The judge may impose conditions of the release including: placing the defendant in the custody of a person or organization; restricting the defendant's travel, association, or residency; or prohibiting the defendant from possessing any dangerous weapon. The judge may also deny release to a defendant charged with certain felonies including first-degree or second-degree sexual assault of a child or repeated sexual assault of the same child (child sex offense).

This bill requires a judge who is releasing a defendant charged with a child sex offense to impose the following as conditions of release: a restriction that the defendant avoid the residence, school, or place of employment of the alleged victim; a restriction that the defendant avoid contacting, or attempting to contact, the alleged victim; and a restriction that the defendant not reside within 250 feet of the residence of the alleged victim. This bill allows some discretion on the residency

or on a property that is adjacent to the residence of the alleged victim

restriction, including not imposing the condition, if the condition would cause the defendant or the defendant's family undue hardship.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 969.03 (1) (intro.) of the statutes is amended to read:

969.03 (1) (intro.) A defendant charged with a felony may be released by the judge without bail or upon the execution of an unsecured appearance bond ~~or the~~. The judge may in addition to requiring the execution of an appearance bond or in lieu thereof impose one or more of the following conditions which will assure appearance for trial:

SECTION 2. 969.03 (1) (b) of the statutes is amended to read:

969.03 (1) (b) ~~Place~~ Except as provided in sub. (1e), place restrictions on the travel, association, or place of abode of the defendant during the period of release.

SECTION 3. 969.03 (1e) of the statutes is created to read:

969.03 (1e) (a) If the defendant is charged with a violation of s. 948.02 (1) or (2) or 948.025 (1), the judge shall impose, in addition to requiring under sub. (1) the execution of an appearance bond or in lieu thereof, all of the following conditions:

(a) ~~1.~~ A restriction that the defendant avoid the residence, school, or place of employment or any temporary residence of the alleged victim of the violation.

(b) ~~2.~~ A restriction that the defendant avoid contacting, attempting to contact, or causing any person other than a party's attorney or a law enforcement officer to contact or attempt to contact the alleged victim of the violation.

(c) ~~3.~~ Except as provided in par. (b), a restriction that the defendant not reside within 250 feet of the residence of the alleged victim of the violation.

, or on a property that is adjacent to the residence,

1 (b) If the judge finds, by clear and convincing evidence, that imposing the
2 condition under par. (a) 3. would cause the defendant or the defendant's family undue
3 hardship, the judge may do one of the following:

4 1. The judge may impose a condition that the defendant not reside within a
5 distance that is less than 250 feet of the residence of the alleged victim.

6 2. If imposing a restriction under subd. 1. would cause the defendant or the
7 defendant's family undue hardship, not impose the condition under par. (a) 3.

8 **SECTION 4. Initial applicability.**

9 (1) This act first applies to releases granted on the effective date of this
10 subsection.

11 (END)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1882/P8
CMH:sac/m

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

today if possible

Mr. Cat

- 1 **AN ACT** *to amend* 969.03 (1) (intro.) and 969.03 (1) (b); and *to create* 969.03 (1e)
2 of the statutes; **relating to:** travel, association, and residency conditions of
3 release before trial for individuals charged with felony sexual assault of a child.

Analysis by the Legislative Reference Bureau

Under current law, a judge may release a defendant charged with a felony without bail or upon the execution of an unsecured appearance bond. The judge may impose conditions of the release including: placing the defendant in the custody of a person or organization; restricting the defendant's travel, association, or residency; or prohibiting the defendant from possessing any dangerous weapon. The judge may also deny release to a defendant charged with certain felonies including first-degree or second-degree sexual assault of a child or repeated sexual assault of the same child (child sex offense).

This bill requires a judge who is releasing a defendant charged with a child sex offense to impose the following as conditions of release: a restriction that the defendant avoid the residence, school, or place of employment of the alleged victim; a restriction that the defendant avoid contacting, or attempting to contact, the alleged victim; and a restriction that the defendant not reside within 250 feet of the residence of the alleged victim or on a property that is adjacent to the residence of the alleged victim.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 969.03 (1) (intro.) of the statutes is amended to read:

969.03 (1) (intro.) A defendant charged with a felony may be released by the judge without bail or upon the execution of an unsecured appearance bond ~~or the~~. The judge may in addition to requiring the execution of an appearance bond or in lieu thereof impose one or more of the following conditions which will assure appearance for trial:

SECTION 2. 969.03 (1) (b) of the statutes is amended to read:

969.03 (1) (b) Place Except as provided in sub. (1e), place restrictions on the travel, association, or place of abode of the defendant during the period of release.

SECTION 3. 969.03 (1e) of the statutes is created to read:

969.03 (1e) If the defendant is charged with a violation of s. 948.02 (1) or (2) or 948.025 (1), the judge shall impose, in addition to requiring under sub. (1) the execution of an appearance bond or in lieu thereof, all of the following conditions:

(a) A restriction that the defendant avoid the residence, school, or place of employment or any temporary residence of the alleged victim of the violation.

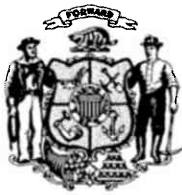
(b) A restriction that the defendant avoid contacting, attempting to contact, or causing any person other than a party's attorney or a law enforcement officer to contact or attempt to contact the alleged victim of the violation.

(c) A restriction that the defendant not reside within 250 feet of the residence, or on a property that is adjacent to the residence, of the alleged victim of the violation.

SECTION 4. Initial applicability.

(1) This act first applies to releases granted on the effective date of this subsection.

(END)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1882/1
CMH:sac:jm

2

TRAY

+ WJ

2013 BILL

Regen

1 AN ACT **to amend** 969.03 (1) (intro.) and 969.03 (1) (b); and **to create** 969.03 (1e)
2 of the statutes; **relating to:** travel, association, and residency conditions of
3 release before trial for individuals charged with felony sexual assault of a child.

Analysis by the Legislative Reference Bureau

Under current law, a judge may release a defendant charged with a felony without bail or upon the execution of an unsecured appearance bond. The judge may impose conditions of the release including: placing the defendant in the custody of a person or organization; restricting the defendant's travel, association, or residency; or prohibiting the defendant from possessing any dangerous weapon. The judge may also deny release to a defendant charged with certain felonies including first-degree or second-degree sexual assault of a child or repeated sexual assault of the same child (child sex offense).

This bill requires a judge who is releasing a defendant charged with a child sex offense to impose the following as conditions of release: a restriction that the defendant avoid the residence, school, or place of employment of the alleged victim; a restriction that the defendant avoid contacting, or attempting to contact, the alleged victim; and a restriction that the defendant not reside within 250 feet of the residence of the alleged victim or on a property that is adjacent to the residence of the alleged victim.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

^ or more if the
judge so orders ^

BILL

SECTION 1

1 **SECTION 1.** 969.03 (1) (intro.) of the statutes is amended to read:

2 969.03 (1) (intro.) A defendant charged with a felony may be released by the
3 judge without bail or upon the execution of an unsecured appearance bond ~~or the~~.
4 The judge may in addition to requiring the execution of an appearance bond or in lieu
5 thereof impose one or more of the following conditions which will assure appearance
6 for trial:

7 **SECTION 2.** 969.03 (1) (b) of the statutes is amended to read:

8 969.03 (1) (b) Place Except as provided in sub. (1e), place restrictions on the
9 travel, association, or place of abode of the defendant during the period of release.

10 **SECTION 3.** 969.03 (1e) of the statutes is created to read:

11 969.03 (1e) If the defendant is charged with a violation of s. 948.02 (1) or (2)
12 or 948.025 (1), the judge shall impose, in addition to requiring under sub. (1) the
13 execution of an appearance bond or in lieu thereof, all of the following conditions:

14 (a) A restriction that the defendant avoid the residence, school, or place of
15 employment or any temporary residence of the alleged victim of the violation.

16 (b) A restriction that the defendant avoid contacting, attempting to contact, or
17 causing any person other than a party's attorney or a law enforcement officer to
18 contact or attempt to contact the alleged victim of the violation.

19 (c) A restriction that the ~~residence of the~~ defendant ~~not~~ reside within 250 feet of the residence,
20 or on a property that is adjacent to the residence, of the alleged victim of the violation.

21 **SECTION 4. Initial applicability.**

22 (1) This act first applies to releases granted on the effective date of this
23 subsection.

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1882/2ins
CMH:.....

1 Insert 2-20

2 (c) A restriction that the defendant not reside within 250 feet, or a greater
3 distance if the judge so orders, of the residence of the alleged victim of the violation
4 and that the defendant not reside on a property that is adjacent to the residence of
5 the alleged victim of the violation.

Barman, Mike

From: Leiber, John
Sent: Friday, April 26, 2013 4:30 PM
To: LRB.Legal
Subject: Draft Review: LRB -1882/2 Topic: Imposing bail conditions on residency proximity to victim following charge of child sex offense

Please Jacket LRB -1882/2 for the ASSEMBLY.

John Leiber
Legislative Assistant
Office of State Representative Weatherston, 62nd District
(608) 266-0731
john.leiber@legis.wisconsin.gov